

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Core Communications, Inc.)	WC Docket No. 03-171
)	
Petition for Forbearance Under)	
47 U.S.C. § 160(c) from Application of)	
the ISP Remand Order)	

OPPOSITION OF SBC COMMUNICATIONS INC

In its Petition for Forbearance,¹ Core Communications, Inc. (“Core”) presents no compelling reason for the Commission to forbear from applying its *ISP Intercarrier Compensation Order*.² At bottom, Core is simply upset because it missed the arbitrage gravy train for ISP-bound traffic that the Commission ended when it issued its *ISP Intercarrier Compensation Order*. The Commission should accord short shrift to Core’s Petition and should promptly deny it.

I. CORE HAS NOT SATISFIED THE STATUTORY REQUIREMENTS FOR FORBEARANCE

Core’s Petition asks that the Commission repudiate entirely the policy goals, as well as the economic principles underlying those goals, set forth by the Commission in its *ISP Intercarrier Compensation Order*. The gravamen of Core’s petition is that the Commission’s *ISP Intercarrier Compensation Order* interferes with CLEC business plans that are “heavily dependant upon the CLECs’ ability [sic] recoup embedded costs, in part, through the collection

¹ See Petition for Forbearance filed by Core Communications, Inc. on July 14, 2003 (“Core Petition”).

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001), *remanded without vacatur*, *WorldCom, Inc. v F.C.C.*, 288 F.3d 429 (D.C. Cir. 2002) (“*ISP Intercarrier Compensation Order*”).

of reciprocal compensation revenues.”³ Eliminating CLEC dependence on intercarrier compensation payments for ISP-bound traffic, however, is the principal purpose of the *ISP Intercarrier Compensation Order*, and for good reason. As the Commission found in the *ISP Intercarrier Compensation Order*, the availability of reciprocal compensation for ISP-bound traffic “has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets.”⁴ Although the Commission observed that such market distortions “may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users,” the Commission noted that “[t]he regulatory arbitrage opportunities associated with intercarrier payments are particularly apparent with respect to ISP-bound traffic ... because ISPs typically generate large volumes of traffic that is virtually all one-way[.]”⁵ Indeed, the Commission noted, “there is convincing evidence in the record that at least some carriers have targeted ISPs as customers merely to take advantage of these intercarrier payments.”⁶ The Commission further observed that these payments had even spurred some carriers to engage in fraud in order to inflate their intercarrier payments for ISP-bound traffic.⁷

Based on these findings, the Commission made clear its belief that intercarrier compensation should be eliminated altogether for ISP-bound (and perhaps other) traffic.⁸ Although the Commission stopped short of a definitive conclusion in this regard because of

³ *Core Petition* at 6.

⁴ *ISP Intercarrier Compensation Order* at ¶ 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at ¶ 70

⁸ The record “strongly suggests that bill and keep is likely to provide a viable solution to the market distortions caused by the application of reciprocal compensation to ISP-bound traffic.” *Id.* at ¶ 74.

“specific questions regarding bill and keep that require further inquiry,”⁹ it found “a need for immediate action with respect to ISP-bound traffic.”¹⁰ To that end, it established the interim transitional regime that Core now asks the Commission to discard.

The interim compensation regime that Core challenges serves two purposes. First, it limits the arbitrage opportunity and, hence, market distorting effects of reciprocal compensation for ISP-bound traffic. The Commission achieved this limit by establishing rate caps and limits on the growth of compensable traffic, and also by preventing the expansion of reciprocal compensation arbitrage to new companies and/or new markets. Second, it effects “a transition toward ... a more rational cost recovery mechanism under which LECs recover more of their costs from their own customers.”¹¹

Both of these goals would be undermined if the Commission now scrapped this regime, as Core requests. Indeed, Core seeks nothing less than a return of the blatant competition-distorting arbitrage that compelled the Commission to adopt this regime in the first place. There is little doubt that the Commission should reject this request out of hand. The Commission was correct to limit the abuses made possible by reciprocal compensation for ISP-bound traffic. If anything, the Commission should have done so sooner and more definitively. Surely, the *last* thing the Commission should do now is to retreat from that decision and resurrect the distortions and abuses that infected telecommunications markets for so long.

According to Core, the transition mechanism should be scrapped because it discriminates against CLECs who seek to expand their ISP business into new markets. This claim has no merit. The Commission’s objective is to move all carriers to bill and keep for ISP-bound traffic. The fact that the Commission adopted a transition mechanism for carriers who were exchanging traffic pursuant to interconnection agreements as of the date of the *ISP Intercarrier*

⁹ *Id.* at ¶ 6.

¹⁰ *Id.*

¹¹ *Id.* at ¶ 83.

Compensation Order is not discriminatory. Rather, it acknowledges that those carriers may have acted in reliance on reciprocal compensation revenue and thus were not similarly situated to carriers who were not exchanging traffic pursuant to interconnection agreements at that time. Moreover, even if Core were correct (which it is not), the solution is not to forbear from applying the *ISP Intercarrier Compensation Order*. “Allowing carriers in the interim to expand into new markets using the very intercarrier compensation mechanisms that have led to the existing problems would exacerbate the market problems we seek to ameliorate.”¹² Rather, the solution to Core’s criticism would be immediately to move all carriers to bill and keep for ISP-bound traffic.

Core’s claim that the *ISP Intercarrier Compensation Order* discriminates among RBOCs and CLECs is similarly unfounded. In fact, the *ISP Intercarrier Compensation Order* treats all LECs the same. Any LEC—incumbents or CLEC—exchanging ISP-bound traffic pursuant to an interconnection agreement as of the date of the *ISP Intercarrier Compensation Order* is subject to the Commission’s interim approach to moving to bill and keep for ISP-bound traffic. Similarly, any LEC—incumbent or CLEC—not exchanging such traffic pursuant to an interconnection agreement as of that date is subject immediately to bill and keep. The *only* division in the *ISP Intercarrier Compensation Order* is among carriers who were and were not exchanging ISP-bound traffic pursuant to interconnection agreements as of the date of the order. Nothing in the order is “preserved for RBOCs,” as Core claims,¹³ and Core’s alleged discrimination between RBOCs and CLECs is thus entirely baseless.

Core also claims that forbearance is warranted because the *ISP Intercarrier Compensation Order* has discouraged investment and has harmed consumers. But Core offers no evidence—none whatsoever—that the *ISP Intercarrier Compensation Order* to support these arguments – and for good reason: they are groundless. In the *ISP Intercarrier Compensation*

¹² *Id.* at ¶ 81.

¹³ *Core Petition* at 11.

proceeding, the Commission concluded, based on volumes of evidence, that reciprocal compensation for ISP-bound traffic distorted investment incentives and harmed consumers. Core does not offer any credible argument that should cause the Commission to repudiate this finding.

II. CONCLUSION

The Commission has recognized that ISP reciprocal compensation payments distort the market and create a barrier to competition. Allowing Core to expand into new markets and collect additional ISP reciprocal compensation revenues does not serve the public interest and is inconsistent with the Commission's *ISP Intercarrier Compensation Order*. For these reasons, the Commission should promptly deny Core's Petition for Forbearance.

Respectfully Submitted,

SBC COMMUNICATIONS INC.

/s/ Jim Lamoureux

Jim Lamoureux

Gary L. Phillips

Paul K. Mancini

1401 I Street NW 4th Floor

Washington, D.C. 20005

202-326-8911 – phone

202-408-8745 - facsimile

Its Attorneys

August 29, 2003